IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 554 OF 2007

IN

SUMMARY SUIT NO. 1332 OF 2004

Food and Inns Ltd. .... Plaintiff
Vs.
M/s Superior Drinks Pvt. Ltd. .... Defendant

Mr. Kirit Mody i/b R.G. Sheth & Co. for Plaintiff.
Mr. P.V. Nelson Rajan for Defendant.

CORAM : SHRI. A.M. KHANWILKAR, J.
DATE : 3RD APRIL, 2007

P.C.

1) Heard learned Counsel for the parties. Perused the pleadings. This notice of motion is to condone the delay of 1291 days in taking out this motion and to quash and set aside the exparte decree passed against the applicant-defendant dtd. 29th September 2004 in Summary Suit No. 1332 of 2004.

2) The only assertion made in the Affidavit in support of motion is that the suit summons was never served on the defendant at any point of time much less before the decree came to be passed on

29th September 2004. This assertion has been countered by the plaintiffs not only on Affidavit but substantiated by the acknowledgment of service of suit summons which was duly served on the defendant. The seal of defendant's company is found on the acknowledgment which was produced alongwith Affidavit of Service. In such case no indulgence is warranted much less when the delay is of 1291 days.

3) Besides there is substance in the argument of the plaintiff that in view of the exposition of the Apex Court in case of Rajni Kumar v. Suresh Kumar Malhotra and another in **AIR 2003 SUPREME COURT 1322**, no indulgence be shown to the defendants in such fact situation of the present case, for defendants have not even remotely indicated as to how they would succeed in contesting the case made out in the plaint.

4) No interference is warranted in this Motion. The same is dismissed with cost quantified at Rs.5,000/- to be paid to the plaintiffs.

(A.M. KHANWILKAR, J.)